

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA)

Plaintiff,)

Case no

vs.)

13-30053-MJR

DESTROY J. MARCOTTE)

14-30107-MJR

Defendant,)

In camera proceeding
Motion to Vacate/Void Convictions

Representative for the defendant moves this court to vacate/void convictions of said defendant and release from custody the representative for the defendant on the grounds the plaintiff, when challenged has failed to provide evidence of standing/jurisdiction over either the defendant or its representative hereinafter (defense).

The prosecution when challenged before trial never presented any evidence of standing or jurisdiction and was not held to its burden by the court. The defense claims the court erred and thereby violating the due process clause of the Constitution and Supreme Court rulings. The defense objected in open court as to the prosecution proceeding forward in this case without any evidence in the record before trial as to prove or meets its burden

as to the defendant or its representative being liable to the U.S. Code and Constitution. The court overruled the objections and allowed the prosecution to continue. The defense has taken no position as to the law not applying, defense is just doing no more than lawfully challenging the prosecution to prove from its files the authority to bring action. "No sanctions can be imposed absent proof of jurisdiction"

Standard v. Olsen 74 S.Ct 768, Title 5 U.S.C 556 + 558 (b). "The law provides that once State and Federal jurisdiction is challenged it must be proven" Main v. Thiboutot 100 S.Ct 2502.

"There is no discretion to ignore lack of jurisdiction" Joyce v. U.S. 474 F2d 215. This court has also held and stated "I have it" when jurisdiction was challenged by the defense. The higher court has ruled to the contrary.

"A court has no jurisdiction to determine its own jurisdiction for basic issue in any case before a tribunal is its power to act, and a court must have authority to decide that question in the first instance", Rescue Army v. Municipal Court of Los Angeles 171 P2d; 331 U.S 549, 91 L.ed. 1666, 67 S.Ct 1409. "Jurisdiction once challenged is to be proven not by the court but by the party attempting to assert

jurisdiction. The burden of proof of jurisdiction lie with theasserter "McNutt v. GMAC, 298 U.S 178. " Thus, wher a judicial tribunal has no jurisdiction of subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term. Dillon v. Dillon 187 P.27. " Jurisdiction can be challenged at any time, even on final determination. Basso v. Utah Power + Light Co. 495 2nd 906 at 910. "A departure from a court from those recognized and established requirements of law, however close and apparent adherence to mere form in method and procedure, which has the effect of depriving one of a constitutional right, is a excess of jurisdiction." Wuest v. Wuest 127 P2d 934, 937. " Untill plaintiff submits uncontroversial evidence of subject matter jurisdiction to the court that the court has subject matter jurisdiction, the court is proceeding without subject matter jurisdiction". Loos v. American Energy Savers Inc., 168 Ill App. 3d 558, 522 N.E2d 841 (1988). Neither Judges nor Govt. attorneys are above the law. See United States v. Isaacs 493 F.2d 1124, 1143 (7th Cir. 1974). IF the court and the prosecution somehow believe the defense has not challenged

jurisdiction in this instant matter. Defense hereby challenges the Political jurisdiction and standing is hereby challenged again. There is now no other matter before this court until the prosecution meets its burden and proves that it had evidence on the record before any proceedings continued after defenses first objection. If it is the courts and the prosecutors presumption that the defense has voluntarily consented to jurisdiction the record is now to be corrected. The defense has never knowingly, willingly and knowledgeably and intentionally, having been fully informed of the negative consequences thereof prior thereto, voluntarily agreed to submit himself and/or itself to the political authority plaintiff herein. The burden is now on the prosecution to prove from its files the defense voluntarily submitted to the jurisdiction of the State. "The rule is not that the particular communications contained in a statement were voluntarily made, but it must be sufficient to establish that the making of the statement was voluntary; ... the accused was not involuntarily impelled to make a statement, when but for improper influences he would have remained silent" *Miranda v. Oregon*, 384 U.S. 436, 462 (1965) - quoting from

Bram v. U.S., 168 U.S. 532 at 540.

The representative for the defendant has been portrayed as being some kind of sovereign citizen or something and of conduct that the laws don't apply. The representative has done nothing more than fulfill his duty to challenge authority per the high Court See *Ryder v. United States*, 115 S.Ct. 2031, 132 L.Ed.2d 136 515 U.S. 177. I am required to initiate a direct challenge to authority of anyone representing him/herself as a government officer or agent prior to the finality of any proceeding in order to avoid implications of de facto officer doctrine. When challenged, those posing as government officers and agents are required to affirmatively prove from the record whatever authority they claim. In absent the proof they may be held personally accountable for loss injury and damages. The representative also relies on the high Court in *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384 (1947). "Whatever the form in which the Government functions, anyone entering into an arrangement (contract) with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority."

The scope of his authority may be explicitly defined by Congress or limited by delegated legislation, properly exercised by rule making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority. The representative also relies on the court to follow its own rules given to it in *Federal Trade Commission v. Raladam Co.*, 283 US 643, 649; 51 S.Ct 587 (1931) "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader powers be desirable, they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions".

The defense does not consent to any further proceedings until the prosecution has met its burden imposed by law. The representative no longer consents to be held as Surety for the defendant and moves this court to be released from custody.

Further the plaintiff "bears the burden of demonstrating standing and must plead its components with specificity." *Coyne*, 183 F.3d at 494; *Valley Forge Christian College v. Americans United for Separation of Church and State Inc.*, 454 U.S. 464 (1982).

Also to satisfy the requirements of Article III of the United States Constitution, the plaintiff must show he has personally suffered some actual injury as a result of the illegal conduct of the defendant. *Coyne* 183 F.3d at 494 *Vally Forge*, 454 U.S. at 472.

The plaintiff has not satisfied its burden of demonst standing at the time of filing of the Complaint. "Standing represents a jurisdictional requirement which remains open to review at all stages of litigation".

National Organization Women, Inc v. Scheidler, 510 U.S. 249. The high Courts have found unfit for adjudication any cause that

"is not in any real sense adversary" that does not assume the 'honest and actual antagonistic assertion of rights' to the adjudicated". *Poe v. Ullman* 367 U.S. 497,

505 (1961). The representative as one of

the People has no true legal name as is presumed by the plaintiff. If the plaintiff

contends otherwise please evidence from its own files the contract or agreement that establishes the fact that the representative being fully informed entered into said contract that created the presumed contractual and/or subservient relationship.

As far as the court is concerned, it has breached its duty to protect the law.

"Where a court failed to observe safeguards, it amounts to a denial of due process of law, court is deprived of juris", *Merritt v. Hunter* C.A. Kansas 170 F2d 739. The prosecution has failed to prove its burden in this matter therefor failing to even put a governing class to which the case belongs. The prosecutors' conduct has created constitutional errors.

"In criminal cases, certain constitutional errors require automatic reversal" see *State v. Schmit*, 273 Minn. 78, 88, 139 N.W. 2d 800, 807 (1966).

As the court and the prosecution can plainly see the courts clearly support the defenses claims in this matter.

The relief sought for the defense is to vacate/void the convictions and return the defendant and its representative to good standing in the community and return any and all property that was taken and what the court deems just and compensation for his and its liberties being violated.

DESTY S. MARCOTTE

Desty Marcotte

for the defendant and
one of the people